

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF CALIFORNIA

RANDY PEREZ,

Plaintiff,

v.

CERVANTES,

Defendant.

Case No. 1:22-cv-00390-BAM (PC)

**ORDER GRANTING PLAINTIFF’S MOTION
THAT THE SCHEDULING ORDER BE
MODIFIED**

(ECF No. 47)

**ORDER SETTING DEADLINE FOR
PLAINTIFF TO FILE SUPPLEMENTAL
OPPOSITION AND FOR DEFENDANT TO
FILE SUPPLEMENTAL REPLY TO MOTION
FOR SUMMARY JUDGMENT**

Plaintiff Randy Perez (“Plaintiff”) is a state prisoner proceeding *pro se* in this civil rights action pursuant to 42 U.S.C. § 1983. This action proceeds against Defendant Cervantes for excessive force in violation of the Eighth Amendment. All parties have consented to United States Magistrate Judge jurisdiction. (ECF No. 40.)

On April 26, 2024, Defendant filed a motion for summary judgment on the grounds that: (1) Plaintiff cannot establish that Defendant violated his Eighth Amendment rights by subjecting him to excessive force; and (2) Plaintiff cannot establish that Defendant violated any clearly established law, thus entitling her to qualified immunity. (ECF No. 46.)

On May 6, 2024, Plaintiff filed a motion that the scheduling order be modified due to his repeated and unsuccessful requests for a specific document—an investigative report written by Cassie Dominguez—from CDCR and defense counsel. (ECF No. 47.) Plaintiff filed an opposition to the motion for summary judgment on May 15, 2024, in which he again indicated

1 that he needed to review the investigative report but had been unable to do so. (ECF No. 48.)

2 On May 16, 2024, Defendant filed a response indicating that despite making prior
3 arrangements, defense counsel realized Plaintiff likely had not had the opportunity to review the
4 Dominguez investigative report at issue. (ECF No. 49.) As a courtesy, defense counsel arranged
5 for Plaintiff to review the report at his current institution, but not until May 20 or 21, 2024. (*Id.*)
6 On May 21, 2024, Defendant filed a notice indicating that Plaintiff had reviewed the documents
7 on May 20, 2024, and Defendant has no objection to setting a deadline for Plaintiff to file a
8 further opposition to the motion for summary judgment on or before June 3, 2024. (ECF No. 50.)

9 In light of the parties' filings, the Court finds it appropriate to grant Plaintiff's request that
10 the scheduling order be modified, construed as a motion to file a supplemental opposition, based
11 on his inability to review the Dominguez investigative report until May 20, 2024. The Court
12 further finds it appropriate to grant Plaintiff an extension of thirty days, rather than fourteen, to
13 file a supplemental opposition. This will allow Plaintiff time to receive the Court's order by mail,
14 and to prepare and mail back any response. As Defendant will be permitted an opportunity to file
15 a reply brief in response to Plaintiff's original and supplemental oppositions, the Court finds that
16 Defendant will not be prejudiced by the extension granted here.

17 Accordingly, it is HEREBY ORDERED that:

- 18 1. Plaintiff's motion that the scheduling order be modified, (ECF No. 47), is GRANTED;
- 19 2. Plaintiff's supplemental opposition to Defendant's motion for summary judgment, (ECF
20 No. 46), shall be filed within **thirty (30) days** from the date of service of this order; and
- 21 3. Defendant's reply, if any, shall be filed within **fourteen (14) days** from the date of filing
22 of Plaintiff's supplemental opposition.

23
24 IT IS SO ORDERED.

25 Dated: May 24, 2024

26 /s/ Barbara A. McAuliffe
27 UNITED STATES MAGISTRATE JUDGE
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